

# **EXHIBIT 3**

-----Original Message-----

From: Frackman, Andrew [mailto:AFrackman@OMM.com]  
Sent: Monday, October 04, 2010 8:11 AM  
To: Steven J. Rosenwasser  
Cc: Elias, Brad; Wise, Jr., Robert F.; Hunter, Fraser; Markel, Gregory; Andrew Clubok; Friedman, Brian L.; Sinkfield, Richard; Elizabeth G. Eager; Nicole G. Iannarone; John E. Floyd; peppermanr@sullcrom.com  
Subject: Re: Removal and Depositions

Again, Steve, you subtly misstate the facts. We were prepared to conduct the 26(f) on Wednesday in New York, when you were already scheduled to be in New York for a deposition. You insisted on conducting the meeting in Atlanta, even though that necessitates at least a half-dozen or more lawyers to fly down to you, further underscoring the inconvenience of that forum. The first day that was possible for all of these defense counsel to travel to you was Friday.

Andy

Andrew Frackman  
212.326.2017 (o)  
917.331.4199 (c)

On Oct 4, 2010, at 7:39 AM, "Steven J. Rosenwasser" <[rosenwasser@bmelaw.com](mailto:rosenwasser@bmelaw.com)> wrote:

> Andrew,  
>  
> Our current understanding is that Rule 26 will not permit us to move  
> forward with a non-Court-Ordered deposition prior to the 26(f). The  
> defendants were unwilling or unable to conduct the 26(f) prior to this  
> Friday, and thus your improper removal necessitated the postponement of  
> the individual plaintiff depositions. That said, I agree that the law  
> will speak for itself as to these other matters.  
>  
> We look forward to hearing from you on Melz, and we also need your  
> position on Mr. Tranfaglia's Court Ordered October 14 deposition. If  
> you do not represent Mr. Tranfaglia, please let us know immediately.  
>  
> As with all communications since removal, Plaintiffs do not agree with  
> or consent to the removal in this case. On the contrary, Plaintiffs  
> intend to seek to remand. Plaintiffs engage in this communication to  
> ensure no additional prejudice is suffered while this issue is resolved.  
>  
> Steven  
>  
> -----Original Message-----  
> From: Frackman, Andrew [mailto:AFrackman@OMM.com]  
> Sent: Monday, October 04, 2010 7:28 AM  
> To: Steven J. Rosenwasser  
> Cc: Elias, Brad; Wise, Jr., Robert F.; Hunter, Fraser; Markel, Gregory;  
> Andrew Clubok; Friedman, Brian L.; Sinkfield, Richard; Elizabeth G.  
> Eager; Nicole G. Iannarone; John E. Floyd; peppermanr@sullcrom.com  
> Subject: Re: Removal and Depositions  
>  
> Look, you can try to seek expenses, but you will have difficulty seeking  
> expenses for depositions that we are prepared to go forward with, such

> as those of the plaintiffs. I also want my position to be clear: just  
> as you assert that your participation in discovery is not an  
> acknowledgment of the propriety of our removal, we reserve all rights to  
> argue that your participation in discovery in federal court is relevant.  
> Ultimately, it is not what you or I say, but what the law provides that  
> will resolve these matters.  
>  
> Andy  
>  
> Andrew Frackman  
> 212.326.2017 (o)  
> 917.331.4199 (c)  
>  
> On Oct 4, 2010, at 7:19 AM, "Steven J. Rosenwasser"  
> <[rosenwasser@bmelaw.com](mailto:rosenwasser@bmelaw.com)> wrote:  
>  
>> Andy,  
>>  
>> Thank you for the follow up. Unfortunately, to our understanding,  
> this  
>> is not an issue of what can be done, but rather what the rules require  
>> with respect to matters that are not the subject of a pending Court  
>> Order. Moreover, you indicated during our call that you would not  
>> produce Mr. Melz for his scheduled deposition this week. Thus, we do  
>> not understand how ML can take the position that it is permitted to  
>> depose our plaintiffs, but we cannot depose your witnesses. I suspect  
>> we will not gain much through a debate here, and do not want to make  
>> this an adversarial issue. I simply wanted to confirm our position.  
> We  
>> can discuss rescheduling at this week's 26(f). In the interim, I do  
> ask  
>> that you please begin finding alternative dates for Mr. Melz.  
>>  
>> As with all communications since removal, Plaintiffs do not agree with  
>> or consent to the removal in this case. On the contrary, Plaintiffs  
>> intend to seek to remand. Plaintiffs engage in this communication to  
>> ensure no additional prejudice is suffered while this issue is  
> resolved.  
>>  
>> Steven  
>>  
>> -----Original Message-----  
>> From: Frackman, Andrew [mailto:[AFrackman@OMM.com](mailto:AFrackman@OMM.com)]  
>> Sent: Monday, October 04, 2010 7:16 AM  
>> To: Steven J. Rosenwasser  
>> Cc: Elias, Brad; Wise, Jr., Robert F.; Hunter, Fraser; Markel,  
> Gregory;  
>> Andrew Clubok; Friedman, Brian L.; Sinkfield, Richard; Elizabeth G.  
>> Eager; Nicole G. Iannarone; John E. Floyd; [peppermanr@sullcrom.com](mailto:peppermanr@sullcrom.com)  
>> Subject: Re: Removal and Depositions  
>>  
>> We do not agree, Steven, just so the record is clear. We are prepared  
> to  
>> take any depositions of plaintiffs, if it is more convenient for them  
> to  
>> be deposed as scheduled. Please let me know which plaintiffs would

>> like to go forward with their depositions. As I told you on the phone  
>> last week, that includes any scheduled for this week, as well.  
>>  
>> Andy  
>>  
>> Andrew Frackman  
>> 212.326.2017 (o)  
>> 917.331.4199 (c)  
>>  
>> On Oct 4, 2010, at 5:16 AM, "Steven J. Rosenwasser"  
>> <[rosenwasser@bmelaw.com](mailto:rosenwasser@bmelaw.com)> wrote:  
>>  
>>> Andrew and Brad,  
>>>  
>>>  
>>>  
>>> I am following up on a portion of our call last week regarding ML  
>> Pro's removal. In particular, I just wanted to memorialize  
> Plaintiff's  
>> position that as a result of ML Pro's improper removal, we were forced  
>> to postpone the depositions of several individual plaintiffs that were  
>> scheduled for this week. In the call, I noted that some travel costs  
>> could not be reimbursed, and that we intend to seek them if, as we  
>> believe is correct, this case is remanded back to state court. As I  
> hope  
>> you can appreciate, we do not believe we should have to bear the costs  
>> of what we believe to be an improper removal.  
>>>  
>>>  
>>>  
>>> Please note that the purpose of this email is neither to threaten nor  
>> to escalate this issue, but rather just to avoid any later claim of  
>> surprise or that we did not alert you to this issue (there have been  
>> previous claims of surprise in this case, and we wanted to eliminate  
>> that issue here). We understand that you contest these points.  
>>>  
>>>  
>>>  
>>> Steven  
>>  
>>  
>  
>